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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/032,518	12/27/2001	Steven Lurie	4704P021	6881
56188	7590	04/05/2006		
GREENBERG TRAURIG, LLP 1900 UNIVERSITY AVENUE FIFTH FLOOR EAST PALO ALTO, CA 94303			EXAMINER BENGZON, GREG C	
			ART UNIT 2144	PAPER NUMBER

DATE MAILED: 04/05/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	10/032,518	LURIE, STEVEN	
	Examiner	Art Unit	
	Greg Bengzon	2144	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 27 December 2005.
- 2a) ☐ This action is FINAL.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,4-12,14-16,18-21,24-32,34-36 and 38-45 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,4-12,14-16,18-21,24-32,34-36 and 38-45 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

*Handwritten signature/initials*

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### **DETAILED ACTION**

This application has been examined. Claims 1, 4-12, 14-16, 18-21, 24-32, 34-36, 38-45 are pending. Claims 2-3, 13, 17, 22-23, 33, and 37 have been cancelled.

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 12/27/2005 has been entered.

### ***Priority***

The effective date of the subject matter in the claims in this application is December 27, 2001.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1, 4-12, 14-16, 18-21, 24-32, 34-36, 38-45 are rejected under 35

U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1, 4-12, 14-16, 18-21, 24-32, 34-36, 38-45 recite limitations for 'service seeker' and 'service provider'. The Examiner notes that a person of ordinary skill in the art would not be able to ascertain whether, for each step in said methods, said 'service seeker' and said 'service provider' are denoting a live person or a computer program embodied in a computer device. It appears that there is no clear delineating line between method steps performed by the automated system and method steps performed by a live person. In Applicant Specifications Paragraph 89, the speaker [service provider] is interpreted by the Examiner to be a live person. Thus, in the limitation 'receiving a [confirmation] message at the data processing system from the selected service provider', it is not clear if said confirmation message is automatically and systemically generated by the computer program, or is prompted by an input from a live person. Applicant Specifications Paragraph 99-100 also indicate the speaker [service provider] as a live person. Thus in the Applicant Specifications the terms 'speaker' and 'service provider' are used interchangeably in reference to a live person.

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The Applicant is respectfully requested to clarify which, if any, of the method steps require manual input from a live person and which method steps are fully automated.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 4-8, 10-12, 14-16, 18, 21, 24-28, 30-32, 34-36, 38, 41-44 are rejected under 35 U.S.C. 103(a) as being anticipated by Pugliese et al. (US Publication 2001/0044751) hereinafter referred to as Pugliese, in view of Whyel (US Publication 2001/0027481).

With respect to Claim 1, Pugliese disclosed a method comprising: receiving, from a service seeker, an appointment request for a live advice communication with a selected service provider during a specified appointment time; (Pugliese - Figures 4-7,

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18-20 Paragraph 115) providing the appointment request to the selected service provider; (Pugliese - Paragraph 207-209) once the appointment request is accepted by the selected service provider, initiating a live advice communication appointment between the service seeker and the selected service provider; (Pugliese – Paragraph 322, Paragraph 327) and connecting the selected service provider with the service seeker for a live advice communication at the specified appointment time. (Pugliese - Paragraph 211)

The Examiner notes that Pugliese disclosed a method for instantaneous live advice communication, but does not disclose a scheduling method for said live advice session, wherein the service seeker and the service provider are able to mutually agree on an appointment schedule in advance. With respect to Claim 1, Pugliese did not disclose wherein providing the appointment request further comprises: determining whether the selected service provider is available during the service seeker specified appointment time; when the selected service provider is unavailable during the appointment time, determining one or more alternate available appointment times of the selected service provider; providing the one or more alternate appointment times to the service seeker; and receiving an appointment time selected from the one or more alternate appointment times by the service seeker as the service seeker specified appointment time. Pugliese did not disclose (re. Claim 1) receiving a message at the data processing system from the selected service provider, the message indicating whether or not the appointment request is accepted.

Since Pugliese states that frustration and lack of personal attention is the main reason for a buyer terminating an online purchase, Pugliese makes an effort to provide a live salesperson, and even allows for other shoppers to join in the session.

(Paragraph 7-8) The Examiner respectfully notes that during peak shopping hours, peak shopping seasons, or a sudden upward spike in demand for a product, the on-demand scheduling system by Pugliese would be quickly be inundated, overwhelmed and be rendered unsatisfactory since shoppers would have long wait times while the system routes requests to the next available live agent, thus defeating the original intent of Pugliese. Thus Pugliese would have found it appropriate and advantageous to search for and implement a call-ahead feature to enable shoppers to schedule an appointment in advance and avoid long wait times during said peak hours.

Whyel disclosed a method for appointment scheduling for live consultation with service providers.

With respect to Claim 1, Whyel disclosed scheduling a live advice appointment session with a service provider. (Figures 13A thru 14C, Paragraph 13-15, Paragraph 65, Paragraph 82) Whyel disclosed wherein providing the appointment request further comprises: determining whether the selected service provider is available during the service seeker specified appointment time; (Whyel – Figure 13B Item 1350) when the

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selected service provider is unavailable during the appointment time, determining one or more available appointment times of the selected service provider; (Whyel – Figure 13B Item 1355) providing the one or more alternate appointment times to the service seeker; (Whyel – Figure 13B Item 1360), and receiving a selected appointment time from the one or more alternate appointment times once selected by the service seeker. (Whyel – Figure 13B, Item 1370, Paragraph 108 thru Paragraph 115)

Whyel disclosed (re. Claim 1) receiving a message at the data processing system from the selected service provider, the message indicating whether or not the appointment request is accepted. (Whyel-Paragraph 51, 121)

Pugliese and Whyel are analogous art because they present concepts and practices regarding facilitation of live advice communication between service seekers and service providers. (Pugliese – Paragraph 8, Whyel – Paragraph 14) The Examiner respectfully suggests that at the time of the invention it would have been obvious to combine the teachings of Whyel regarding scheduling of incoming communication requests into the system and method of Pugliese. The said combination would enable the combined system of Pugliese to 1) enable the service seeker to determine availability of the service provider in advance of the live session, and 2) enable service provider to screen, filter, redirect, or defer incoming service requests. The suggested motivation for doing so would be, as Whyel suggests (Whyel - Paragraph 10), to



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overcome requirements for human intervention for implementing appointment reservations and scheduling.

The combination of Pugliese and Whyel disclosed Claim 4 - the method of claim 1, wherein providing the appointment request further comprises: requesting a deposit from the service seeker; once the deposit is received from the service seeker, (Whyel - Figure 7, Item 716 -718, Paragraph 70, Paragraph 83) verifying a telephone number of the service seeker; and once the service seeker telephone number is verified, sending an appointment request confirmation to the service seeker. (Whyel - Paragraph 87)

The combination of Pugliese and Whyel disclosed Claim 5 - the method of claim 1, wherein scheduling the live advice communication appointment further comprises: determining whether an appointment acceptance is received from the selected service provider; once the appointment acceptance is received from the selected service provider, sending an appointment confirmation to the service seeker; and sending an appointment confirmation to the selected service provider. (Whyel - Paragraph 14)

The combination of Pugliese and Whyel disclosed Claim 6 - the method of claim 1, wherein connecting the selected service provider and the service seeker further comprises: contacting the service seeker via a communications device; once the service seeker accepts a communication connection from the service provider system, contacting the selected service provider via a communications device; (Pugliese -

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Paragraph 322) and once the selected service provider accepts a communications connection from the service provider system, linking the service seeker and the selected service provider via the communications devices for a live advice communication therebetween. (Pugliese - Paragraph 115)

The combination of Pugliese and Whyel disclosed Claim 7 - the method of claim 6, wherein linking the service seeker and the selected service provider further comprises: when the selected service provider fails to accept the communications connection from the service provider system, contacting an alternate system selected service provider within a field of service of the selected service provider as an alternate service provider; and once the alternate service provider accepts the communications connection from the service provider system, linking the alternate service provider and the service seeker via the communications devices for a live advice communication therebetween. (Pugliese - Figure 6, Paragraph 118, Paragraph 207-211)

The combination of Pugliese and Whyel disclosed Claim 8 - the method of claim 7, further comprising: once the call between the service seeker and the alternate service provider is complete, providing the service seeker with a gift from the selected service provider. (Pugliese- Paragraph 340, Paragraph 353)

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The combination of Pugliese and Whyel disclosed Claim 10 - the method of claim 1, wherein providing the appointment request further comprises: generating a service seeker appointment alert within an appointment screen of the selected service provider, wherein the appointment screen includes a list of each service provider accepted appointment and a list of alerts for each pending appointment requests received by the selected service provider. (Whyel - Paragraph 43, Paragraph 65)

The combination of Pugliese and Whyel disclosed Claim 16 and Claim 36 - wherein receiving the appointment request further comprises: viewing an appointments listing page of the selected service provider, (Whyel - Paragraph 43, Paragraph 65) including a listing of each accepted appointment request of the selected service provider (Whyel- Figure 8) and a listing of one or more appointment alerts for pending appointment requests of the selected service provider; (Whyel – Figure 14C) selecting an appointment alert from the one or more alerts listed in the service provider appointment screen; when the service provider is available at an appointment time specified in the appointment alert, accepting the selected appointment alert; and otherwise, declining the selected appointment alert. (Whyel - Paragraph 108 thru Paragraph 115)

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With respect to Claims 11-12, 14-16 and 18, the Applicant disclosed a method with the same limitations as described in Claims 1, 4-8 and 10. Claims 11-12, 14-16 and 18 are rejected on the same basis as Claims 1, 4-8 and 10.

With respect to Claims 21, 24-28, the Applicant disclosed a method with the same limitations as described in Claims 1, 4-8 and 10. Claims 21, 24-28 are rejected on the same basis as Claims 1, 4-8 and 10.

With respect to Claims 30-32, 34-36, and 38 the Applicant disclosed a method with the same limitations as described in Claims 1, 4-8 and 10. Claims 30-32, 34-36, and 38 are rejected on the same basis as Claims 1, 4-8 and 10.

With respect to Claims 41-44, the Applicant disclosed a system with the same limitations as described in Claims 1, 4-8 and 10. Claims 41-44 are rejected on the same basis as Claims 1, 4-8 and 10.

Claims 9, 19, 20, 29, 39, 40, and 45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pugliese (US Publication 2001/0044751), in view of Whyel (US Publication 2001/0027481), as applied above, further in view of Dolan et al.(US Patent 6477246), hereinafter referred to as Dolan.

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With respect to Claims 9, 19, 20, 29, 39, 40, and 45, the combined teachings of Pugliese and Whyel substantially disclose the method and system as described.

However the combined teachings of Pugliese and Whyel do not disclose certain features of the claimed invention, such as the service provider receiving an appointment notification while already engaged by a current service seeker. The Examiner notes that while scheduled appointments are a fair indication of general availability, the actual start and end times for scheduled appointments are highly unpredictable. A successful service provider would be loathe to leave a customer in the middle of a sale, and would make all efforts to retain current customer focus despite expiration of scheduled appointment, without disrespecting the next scheduled customer. Thus Pugliese would have found it appropriate and advantageous to search for and implement a system for adjusting schedules on an ad-hoc basis while still maintaining the current customer session.

Dolan disclosed a method for processing incoming communication requests while currently engaged in another communication session. Dolan allows for mediation of the incoming requests without disrupting the current session. (Dolan - Figure 3, Figure 4, Column 3 Lines 30-65, Column 4 Lines 1-45, Column 6 Lines 30-45)

Dolan disclosed wherein the service provider is engaged in a live advice communication during the service provider system communication connection, notifying the service provider of the scheduled advice communication appointment; (Dolan Column 5 Lines 20-25) receiving a response from the service provider to accept/reject

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the appointment notification; (Dolan - Column 3 Lines 55-65) when the selected service provider accepts the appointment notification, terminating the live advice communication with a current service seeker; and once the advice communication is terminated, (Dolan – Column 6 Lines 25-35) linking the selected service provider and the service seeker via the communications devices for a live advice communication. (Dolan – Column 6 Lines 15-20)

Pugliese, Whyel and Dolan are analogous art because they present concepts and practices regarding scheduling and managing appointments between a service seeker and a service provider, in the context of live consultation sessions. (Dolan - Column 1 Lines 40-45) At the time of the invention it would have been obvious to combine the teachings of Dolan regarding mediation of incoming communication requests into the combined system and method of Pugliese and Whyel. The said combination would enable the combined system of Pugliese and Whyel to 1) alert the service provider of an incoming service request during an ongoing consultation session, and 2) enable service provider of the combined system of Pugliese and Whyel to screen, filter, redirect, or defer incoming service requests while preventing disruption of the current communication session. The motivation for doing so would be, as Dolan suggests (Dolan - Column 1 Lines 30-55), to overcome the limitations of simple non-interactive call redirection or call forwarding systems, which do not place any context on the incoming request, nor provide any indication of next available time slot for the

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service provider, nor allow for impromptu 'return-call' scheduling with confirmation from both parties.

### ***Response to Arguments***

Applicant's arguments filed 12/27/2005 have been fully considered but they are not persuasive.

The Applicant presents the following argument(s) [*in italics*]:

*'Since Pugliese teaches using a live person while Whyel teaches avoiding a live person, the references teach away from each other...There is no convincing line of reasoning as to why an artisan...would have found it obvious to make the combination...'*

The Examiner respectfully disagrees with the Applicant. While Pugliese's goal is to connect the service seeker with a live person, the method of Pugliese for said connection is automated (Pugliese-Paragraph 208). Specifically, Pugliese's 'contact ShopLive agent function' is performed by an automated system, not by a live person. Thus there is no clear reason for not combining the automated processing of Pugliese with the automated processing of Whyel, as both Pugliese and Whyel are disclosing methods and means for connecting a service seeker with a live service provider.

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Furthermore, the Applicant's arguments regarding the unreasonable combination of a live entity and an automated computer system suggest that there is no physical or manual input from a live person involved in the claimed invention, specific to making the appointment schedule and connecting the service seeker and service provider. The Examiner has noted portions in the Specifications that suggest otherwise and is thus issuing a USC 112 2<sup>nd</sup> Paragraph rejection to address this issue.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Greg Bengzon whose telephone number is (571) 272-3944. The examiner can normally be reached on Mon. thru Fri. 8 AM - 4:30 PM.

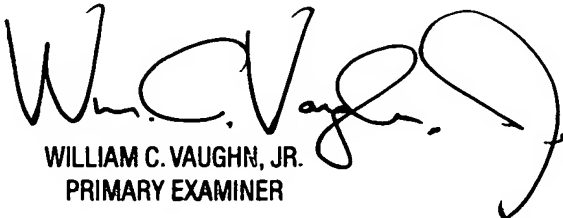
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, William Vaughn can be reached on (571) 272-3922. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.



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gcb

  
WILLIAM C. VAUGHN, JR.  
PRIMARY EXAMINER

